THE HON'BLE SRI JUSTICE C.V. RAMULU

Monday, 27th November,2006

W.P.No.216 of 2002

Between :

Shaik Sarfuddin … Petitioner

and

The A.P. Cooperative Tribunal,

Vijayawada, Krishna District,

and others … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.216 of 2002

ORAL ORDER:

This Writ Petition is filed seeking a Certiorari to call for the records relating to the Orders dated 29-10-1998 passed by the 1st respondent in O.A.No.237 of 1996 confirming the Orders dated 12-12-1991 passed by the 2nd respondent in Rc.No.2206/89-C2 and to quash the same.

Under the impugned Order dated 12-12-1991, the 2nd respondent-surcharge authority fixed the liability against the petitioner for payment of certain amounts, after conducting an enquiry into the matter. Aggrieved by the same, petitioner carried the matter in appeal being O.A.No.237 of 1996 before the 1st respondent-Cooperative

Tribunal, Vijayawada. The Tribunal confirmed the Orders passed by the 2nd respondent by its Orders dated 29-10-1998. Challenging the same, the present Writ Petition is filed.

While admitting the Writ Petition, this Court on 4-1-2002 granted interim suspension of the impugned Orders on condition of the petitioner depositing an amount of Rs.15,000/- within a period of four weeks. Learned Government Pleader states that the interim order has been complied with and the petitioner has paid the amount of Rs.15,000/- on 31-1-2002.

Learned counsel for the petitioner asserted that during the pendency of the surcharge proceedings, a legal notice was issued to respondent No.2 to furnish a copy of report of the inspection conducted by the authority, to enable the petitioner to defend himself properly. Such inspection report was not furnished to the petitioner. However, the surcharge authority proceeded with the matter and passed orders. Aggrieved by the same, petitioner filed an appeal and raised the same objection stating that he has not been furnished with the report of inspection conducted under Section 52 of the A.P. Cooperative Societies Act,1964 (for short 'the Act'); therefore, he could not defend himself effectively. However, the Tribunal confirmed the Orders passed by the surcharge authority.

Per contra, learned Government Pleader appearing for the respondents stated that in spite of opportunity being given to the petitioner on 20-12-1990, he has not submitted any explanation. He was informed through letters dated 14-10-1991 and 4-11-1991 issued to his Advocate to take copy of the inspection report, as desired by him, after payment of the prescribed fees before 20-11-1991. Petitioner has not availed this opportunity also. Therefore, the contention of the petitioner that it is an obligation on the part of the 1st respondent to furnish and supply copy of inspection report and other documents before initiating surcharge proceedings under the Act is mandatory and without following the said procedure, surcharge orders were passed directing the petitioner and other Directors to pay an amount of Rs.81,000/- with interest thereon is not correct.

There is no necessity of going into all the details. The submissions made by the learned Government Pleader and the statement made by the 2nd respondent in his counter affidavit would indicate that the petitioner was not furnished with the copy of the inspection report during the surcharge proceedings, though it was asked for by the petitioner. It is obligatory on the part of the 2nd respondents to furnish all the documents, much more the inspection report, on the basis of which the surcharge proceedings were taken up. The facts would show that no such report was furnished to the petitioner.

In view of the above, the impugned Orders dated 12-12-1991 passed by the 2nd respondent as confirmed by the 1st respondent by its Orders dated 29-10-1998 are liable to be set aside and are accordingly set aside. The matter is remitted back to the 2nd respondent-surcharge authority for reconsideration. Respondent No.2 shall furnish a copy of the report of inspection conducted under Section 52 of the Act and other documents as and when demanded by the petitioner in writing. Thereafter, the 2nd respondent shall proceed with the matter and pass appropriate orders as per law.

The Writ Petition is allowed to the extent indicated above and the matter is remanded to the 2nd respondent. No order as to costs.

27-11-2006

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